

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

Thomas Martino,

Plaintiff,

Civil Action No.: 2:16-cv-00021

v.

Boost Mobile, LLC,

Defendant.

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

For this Complaint, the Plaintiff, Thomas Martino, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1331, in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. The Plaintiff, Thomas Martino ("Plaintiff"), is an adult individual residing in Mount Pleasant, Wisconsin, and is a "person" as defined by 47 U.S.C. § 153(39).
4. Defendant Boost Mobile, LLC ("Boost"), is a California business entity with an address of 9060 Irvine Center Drive, Irvine, California 92618, and is a "person" as defined by 47 U.S.C. § 153(39).

FACTS

5. In or around July 2015, Plaintiff began receiving prerecorded voice messages from Boost.

6. The prerecorded voice message said: "For the next month you'll receive all of the benefits of Visual Voicemail-to-Text at no extra charge!"

7. In early August 2015, Plaintiff called Boost and advised it about received such voice messages.

8. Plaintiff informed Boost that he was not interested in services it was offering and demanded that all calls to him cease immediately.

9. Thereafter, despite having been so informed and directed to cease communications, Boost continued leaving identical voice messages for Plaintiff on a daily basis, several times per day.

10. This caused Plaintiff a great deal of frustration and intruded on his right to be free from unwanted invasions. Plaintiff was ultimately forced to retain the assistance of counsel.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT – 47 U.S.C. § 227, ET SEQ.

11. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

12. At all times mentioned herein and within the last year, Defendant called Plaintiff on his cellular telephone using an ATDS or predictive dialer and/or by using a prerecorded or artificial voice.

13. Defendant continued to place automated calls to Plaintiff's cellular telephone after being directed by Plaintiff to cease calling and knowing there was no consent to continue the calls. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

14. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

15. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

16. Each of the aforementioned calls made by Defendant constitutes a violation of the TCPA.

17. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

18. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against Defendant:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C);

C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: January 6, 2016

Respectfully submitted,

By /s/ Amy L. Cueller

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